THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

Writ Petition No.6341 of 2000

(per the Hon'ble Sri Justice T.Ch.Surya Rao)

Dated 12th June, 2006

Between:

P.Rajendra Prasad and another .. Petitioner

and

Special Court for cases under A.P. Land

Grabbing (Prohibition) Act and others .. Respondents

THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

Writ Petition No.6341 of 2000

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ORDER: (per the Hon'ble Sri Justice T.Ch.Surya Rao)

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The instant writ petition has been filed seeking a writ of Certiorari, assailing the order, dated 24-03-2000, passed by the learned Special Court under the A.P. Land Grabbing (Prohibition) Act, Hyderabad in L.G.A.No.30 of 1999. Respondents 3 to 5 herein are the petitioners, who filed a petition in O.P. No.386 of 1990 under Section 7-A of A.P. Land Grabbing (Prohibition) Act, 1982, (for short 'the Act') to declare them as the owners of the land, which has been more fully described in the schedule appended to the petition and to declare the respondents therein i.e., writ petitioners herein, as land grabbers and to punish them consequently under Sections 3, 4 and 5 of the Act.

Inter alia in the petition it was pleaded that the original petitioner i.e., Smt.K.Vinodhini Reddy, who since died her legal representatives have been brought on record later, purchased the property in question by means of a registered sale deed, dated 23-02-1983, and ever since the sale, she had been in peaceful possession and enjoyment of the same by paying the municipal taxes etc. It was further pleaded that she got the boundary stone pillars fixed on all the four sides in the year 1984 and got the land in question fixed with barbed wire and displayed her name board in the middle of the land. She had applied for permission to construct a house after submitting the plans, but necessary permission was not granted by the municipal corporation as the respondents objected, on the premise that the land belonged to them. It was further specifically averred that the applicants apprehending forceful taking of possession by the respondents, got a compound wall constructed and an iron gate fixed. But, on 25-03-1990, while the construction was in progress, there had been an attempt on the part of the respondents to stop the construction, which the petitioner could resist with the help of the neighbours and that after completion of the compound wall on 02-04-1990, the respondents again

came to the land in question with some men and tried to force their entry by breaking the locks of the iron gate and causing damage to the compound wall and that after having come to know the same, the petitioner approached the police for help and since the police did not give any protection to her, she approached the Special Tribunal under the Act on the premise that the acts of the respondents clearly constitute land grabbing within the meaning of the act.

With the above averments made *inter alia* in the application, the petitioner sought for the reliefs; firstly, for declaring her as the owner of the schedule land; secondly, to declare the respondents as land grabbers; and thirdly to punish them under Sections 3, 4 and 5 of the Act. That application was resisted by the writ petitioners by filing the counter-affidavit. According to them, they were the absolute owners and possessors of the land in question and the petitioner had no title whatsoever.

The learned Special Tribunal framed the following issues for enquiry:

> "1. Whether the petitioner is the owner of the property described in columns 6 to 12 of the petition and is in possession thereof?
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> 2. If so, whether the respondents are land grabbers in respect thereof?
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> 3. To what relief, if any, the petitioner is entitled to?"

During the course of enquiry both sides adduced evidence, both oral and documentary. Two witnesses were examined on the side of the petitioners, besides getting Exs.A1 to A23 marked. One of the respondents were examined as R.W.1 and Exs.B1 to B29 got marked. For the Court, through the Commissioner, Exs.C1 to C10 were marked. Appreciating the evidence on the point, the learned Tribunal was of the view that the petitioner was the owner of the petition schedule land and respondents 1 and 2 were land grabbers and while holding so, the Court granted the relief of possession of the petition schedule land in favour of the petitioner *qua* the respondents 1 and 2.

Having been aggrieved by the said order, dated 22-02-1999, passed by the learned Special Tribunal in O.P.No.386 of 1990, the writ petitioners carried the matter in

appeal to the Special Court in L.G.A.No.30 of 1999. Before the Special Court, it was contended by the petitioners that; (1) attempt to commit land grabbing cannot come within the definition of land grabbing as enjoined under Section 2 (e) of the Act, (2) there has been no proof of identity of the property in question, and (3) that the judgments in Exs.B5 and B7 would operate as a res judicata. The Special Court, on re-appreciation of the evidence available on record and after considering the relevant contentions addressed on either side, was of the clear view that since respondents 1 and 2 claming possession of the application schedule property and as the Special Tribunal clearly stated that the applicants were entitled to possession, the application was obviously maintainable. All the three points thus framed for determination were answered against the appellants and in consequence whereof, the learned Special Court dismissed the appeal.

In the instant writ petition, Sri V.Venkataramana, learned counsel for the petitioners, raises only one point for consideration, namely, that attempt to commit land grabbing as pleaded specifically in the petition could not be considered as an act of land grabbing, which alone gives jurisdiction to the Special Tribunal as well as the Special Court.

On the other hand, Sri Prakash Reddy, learned senior counsel, while conceding the proposition of law as enunciated by the larger bench of this Court in *Hindustan Aeronautics Employees Co-operative Housing Society Limited, Hyderabad v. Special Court (Land Grabbing)* and the judgment of the Apex Court in *N.Srinivasa Rao v. Special Court Under A.P. Land Grabbing (Prohibition) Act*, seeks to contend that the facts obtaining in the instant case, since revealed that the possession was with the respondents, both the judgments referred to above are distinguishable. In the process, learned senior counsel seeks to place reliance upon an unreported judgment of this Court in *Kumare Nagesh V. Syed Hameed Akber* in W.P.No.17171 of 1999, dated 10-06-2005.

Inasmuch as both the learned counsel have not touched upon the merits in the instant case, there is no need for us to go into the merits of the case. The contentious issue can effectively be adjudicated upon by limiting to the jurisdictional issue of the Special Tribunal and Special Court as well. It is trite that jurisdiction over the subject matter, which is otherwise known as inherent jurisdiction goes to the root of the matter. It is equally settled that the allegations made in the plaint decide the forum but not the defence taken by the defendants in the written statement, vide *Abdulla*

Bin Ali v. Galappa. Having regard to the said judgment it is to be seen, whether the Special Tribunal has jurisdiction to entertain the application in respect of the relief sought for by the petitioners *inter alia* in the petition filed by them. We have already adverted to the specific averments made *inter alia* in the petition hereinabove. The petition reads obviously that there had been two attempts on the part of the respondents to take forcible possession of the land in dispute and it was an abortive attempt on the first occasion since the petitioners could repel them with the help of the workers and on the second occasion, they broke the iron gate and caused damage to the compound wall. At any rate, it was not specifically pleaded in the petition that the respondents grabbed the land unlawfully, illegally and without there being any lawful entitlement thereto. In other words, the necessary pleading which confers jurisdiction upon the Special Tribunal and in appeal to the Special Court is conspicuously absent in the petition.

A Division Bench of this Court in *State of Andhra Pradesh V. Pramila Modi and Others* and *M.Yadagiri Reddy V. V.C.Brahmanna* has categorically held that it should be specifically averred in the petition that the respondents committed an act of land grabbing in the sense that they grabbed the land illegally, unlawfully and without any lawful entitlement thereto, which alone gives jurisdiction to the Special Tribunal. The Apex Court in its judgment of *N.Srinivasa Rao's case* in para 47 specifically observed thus:

> "In our view, in a proceeding before the Special Court the only issue which falls for decision is whether there has been an act of land grabbing as alleged and who is the guilty party. The Special Court has no jurisdiction to decide questions relating to acquisition of title by adverse possession in a proceeding under the Act as the same would fall within the domain of the Civil Courts. The learned Special Judge apparently traveled beyond the jurisdiction vested in him under the 1982 Act in deciding that even if the provisions of Section 47 of the Act was a bar to transfer without the sanction of the Tahsildar, the occupants of the land had perfected their title thereto by way of adverse possession."

The Act clearly envisages under Section 8 that the question of determination of title and ownership or lawful possession of any land grabbed shall be triable only by the Special Court constituted in the area in which the land in question is situate. Section 8 of the Act seems to have not been considered by the Apex Court in its letter and spirit. However, we are bound by the judgment of the Apex Court. Inasmuch as it is

not the case of the respondents herein, who are the applicants before the Special Tribunal, that the writ petitioners have committed an act of land grabbing, the Special Tribunal obviously loses every jurisdiction. On the other hand, it is a case of the respondents herein that it is an attempt to commit land grabbing. An attempt to commit land grabbing is not an act of land grabbing. Therefore, it is obvious that the application, as filed before the Special Tribunal, is not maintainable and on the basis of the averments made *inter alia* therein, the Special Tribunal may not take cognizance of the case, since it has no jurisdiction to adjudicate the same.

Apropos the contention of the learned senior counsel that the facts are distinguishable, the learned counsel seeks to place reliance upon an unreported judgment of this Court in W.P.No.17171 of 1999, dated 10-06-2005. That was a case where a relief of permanent injunction was sought for in the application on the premise that it had been a case of an attempt to commit land grabbing. The larger bench judgment of this Court was sought to be relied upon by the adversary in that case questioning the jurisdiction of the Special Tribunal. While adverting to that judgment, it was held in para 34, that it was not a simple case of allegation of attempt to occupy the land and inasmuch as both parties to the earlier proceedings were asserting title as well as possession over the disputed land and as the respondents' predecessors were also convicted for the offence of criminal trespass and the parties brought all those circumstances on record in the proceedings, the judgment of larger bench, was distinguishable. With due respect, we are afraid that we cannot concur with the finding reached by the learned bench. As discussed hereinabove, with reference to the judgment of the Apex Court that it is the plaint or the application that gives the forum, but not the plea taken *inter alia* in the written statement or the counter, as the case may be, by the adversary. There has been no gainsaying that the forum which lacks jurisdiction to adjudicate the matter cannot make an endeavour to touch upon the merits of the case, inasmuch as any finding given on merits of the case becomes void having been given without the necessary jurisdiction. In that view of the matter, any attempt whatsoever on our part to touch upon the merits becomes illegal and without jurisdiction, since the forum can be decided by going through the specific averments made *inter alia* in the plaint or application, as the case may be. This clear legal position has been laid down by the Apex Court in *Abdulla Bin Ali's case.* Surprisingly, in this case, the pleading has not

been sought to be amended.

Therefore, we have no other go except to go by the averments made in the application filed before the Special Tribunal. As the law now stands, an attempt to commit grabbing is not at all a case of land grabbing as defined in Section 2 (e) of the Act. There has been no specific averments in the application that it is a case of illegal and unlawful occupation of the land with an intention to make necessary constructions without there being any lawful entitlement thereto. The averments as averred in the application do not, in our considered view, confer necessary jurisdiction upon the Tribunal to have entertained the application. More over, it is not only a case where it has not been specifically averred in the application that the respondents have committed an act of land grabbing, *nay* a specific case of the respondents that it is an attempt to commit land grabbing. Therefore, Special Tribunal cannot entertain the application by assuming jurisdiction, which the statute has not conferred upon it.

For the above reasons, the Writ Petition is allowed and the orders passed by the Special Tribunal as well as the Special Court are hereby set aside, having been rendered without the necessary jurisdiction. It is always open to the parties to work out their remedies before the appropriate forum. Under the circumstances, we direct both parties to bear the respective costs.

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T.CH.SURYA RAO, J.

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G.CHANDRAIAH, J.

12th June, 2006.

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